

**FINDING OF EMERGENCY  
BY THE  
OFFICE OF THE STATE FIRE MARSHAL (SFM)**

**REGARDING THE CALIFORNIA BUILDING CODE (CBC) & THE CALIFORNIA FIRE  
CODE, CALIFORNIA CODE OF REGULATIONS, TITLE 24, PARTS 2 & 9**

**RELATING TO ADULT DAY PROGRAMS AND ADULT DAY HEALTH CARE  
CENTERS USING DELAYED EGRESS DEVICES AND OR  
SECURED PERIMETER FENCING**

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Government Code section 11346.1 mandates that any finding of emergency shall include a written statement which contains the information required by paragraphs (2) to (6), inclusive, of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

**FINDING OF EMERGENCY**

The following information is evidence that the adoption and repeal of various regulations as proposed by the SFM to the CBC and CFC are necessary for the immediate preservation of the public peace, health and safety or general welfare of the public as described below:

Senate Bill 1361 was approved by the Governor on September 21, 1998 and filed with the Secretary of State on September 22, 1998. This bill amends existing law known as the "California Community Care Facilities Act" by stipulating that emergency regulations shall be promulgated by the Department of Social Services and the Office of the State Fire Marshal to allow "Adult Day Programs and Adult Day Health Care Centers" the option to voluntarily install secured perimeter fencing and or special egress-control devices of the time-delay type. These devices may only be used if that program or center provides services for people with Alzheimer's disease and other dementias for a period of less than twenty-four hours per day.

This voluntary option is strictly limited to programs and centers where a physician has documented that the client has been diagnosed with Alzheimer's disease or other dementias.

This bill affects the following licensing categories:

- ◆ Adult Day Health Care Centers, licensed by Department of Health Services
- ◆ Adult Day Programs, licensed by Department of Social Services

The Legislature identified that there existed a pattern of over utilization of long-term institutional care for elderly persons, resulting in an urgent need to establish a community-based, coordinated statewide service system that provided quality adult day-care for elderly persons. The Legislature viewed "Adult Day Programs and Adult Day Health Centers" as a means for elderly persons to achieve their maximum level of independence in a safe and sanitary environment.

These programs and centers are to be made available to all elderly persons needing these independent living services, including the economically disadvantaged. These programs and centers may also provide outpatient health, rehabilitative, and social services to encourage independent living with help in developing these independent life skills.

The Senate Health and Human Services Committee reported that “Adult Day Programs and Adult Day Health Centers” that care for persons with Alzheimer’s disease and other dementias should be afforded the same safety options as are currently available to “Residential Care Facilities for the Elderly” (RCFE) which are allowed the use secured perimeter fencing and or special egress-control devices of the time-delay type in their care facilities.

The following information is provided to the California Building Standards Commission (CBSC) and interested public parties in compliance with the Government Code as cited below:

## **AUTHORITY AND REFERENCE**

The purpose of these building standards is to implement, interpret, and make specific the provisions of Section 1 commencing with section 1502, 1531.2 and Section 2 commencing with section 1584.

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Sections:

### **Authority**

- Health and Safety Code Sections 13143, 1531.2, 1531.3 & 1584

### **Reference**

- Health and Safety Code Section 1502, 1570.7, 13143 & 18949.2(b)

## **INFORMATIVE DIGEST**

### **Summary of Existing Laws**

**H&SC §1502** – Existing law commencing with section 1500 is cited as the “**California Community Care Facilities Act**” which establishes a coordinated and comprehensive statewide service system for quality community care for mentally ill, developmentally and physically disabled, children and adults including residential and nonresidential programs. This existing law provides a definition of an “**Adult Day Program.**”

**H&SC §1531.2** – Existing law provides that adult day programs providing care for persons with Alzheimer’s disease and other dementias as documented by a physician, may install and use egress control devices and secured perimeter fencing. However such devices and fencing shall conform to the regulations promulgated by the SFM in the California Building and Fire Codes.

The adult day program shall ensure that the facility's staff is trained regarding the following:

- ◆ Operation of the egress control devices and secured perimeter fencing as well as the personal rights of the clients who may have a tendency to wander and insist on being released from the facility.
- ◆ The evacuation procedures for persons with Alzheimer's disease and other dementias when using these extra security measures. This law does not require such facilities to install egress control devices or secured perimeter fencing.

**H&SC §1531.3** - Existing law requires the State Fire Marshal to establish separate fire and panic safety standards and criteria for the evaluation of each licensing category of Section 1502. The State Fire Marshal shall take into consideration the characteristics of the persons served by each facility in establishing these standards and criteria.

**H&SC §1570.7** – Existing law commencing with section 1570 is cited as the “**California Adult Day Health Care Act**” which establishes a community-based system of quality adult day health care to enable elderly persons to maintain maximum independence. The intent of this law is to assure that elderly persons are not institutionalized inappropriately or prematurely. This existing law provides a definition for an “**Adult Day Health Care.**”

**H&SC §1584** – Existing law provides that adult day health care centers caring for persons with Alzheimer's disease and other dementias as documented by a physician, may install and use egress control devices and secured perimeter fencing. However such devices and fencing shall conform to the regulations promulgated by the SFM in the California Building and Fire Codes.

The adult day health care center shall ensure that the facility's staff is trained regarding the following:

- ◆ Operation of the egress control devices and secured perimeter fencing as well as the personal rights of the clients who may have a tendency to wander and insist on being released from the facility.
- ◆ The evacuation procedures for persons with Alzheimer's disease and other dementias when using these extra security measures. This law does not require such facilities to install egress control devices or secured perimeter fencing.

**H&SC §13143** - The SFM shall prepare and adopt regulations establishing minimum requirements for the prevention of fire and for the protection of life and property against fire and panic in any building or structure used or intended for use as an asylum, jail, mental hospital, hospital, home for the elderly, children's nursery, children's home or institution, school, or any similar occupancy of any capacity, and in any assembly occupancy where 50 or more persons may gather.

**H&SC §18949.2(b)** – The State Fire Marshal shall remain the state agency responsible for developing building standards to implement the state's fire and life safety policy in the development of the state's codes related to fire and life safety.

**Summary of Existing Regulations in the 2001 California Building Code (CBC) affected by these proposed regulations:**

- **Chapter 1 – Administrative, Section 101 Title, Purpose and Scope, Section 101.17.14 SFM.** This existing section provides a detailed listing of the occupancies and statutes, which identify the SFM's statutory authority to promulgate regulations relating to fire and life safety requirements to such occupancies.
- **Chapter 2 - Definitions and Abbreviations, Section 202 – A.** This existing section provides definitions for the terms, words and phrases used in the California Building Code (CBC). This existing section does not provide a definition for the following terms:
  - ◆ Adult Day Health Care Centers, as licensed by Department of Health Services
  - ◆ Adult Day Program, as licensed by Department of Social Services
- **Chapter 3 - USE OR OCCUPANCY, Section 305 – REQUIRMENTS FOR GROUP E OCCUPANCIES, 305.1 Group E Occupancies.** This existing section provides the following definition:
  - ◆ Group E, Division 3 occupancy is defined as a nonresidential building used for day-care purposes for six children or persons. Any residential building used for day-care purposes for more than 14 persons. The licensing categories that are identified in this definition are, but not limited to, Adult Day Program and Adult Day Health Care Center.
- **Table 3-A DESCRIPTION OF OCCUPANCIES BY GROUP AND DIVISION.** This existing table provides the code user with a description and a quick reference to the occupancy groups and where the regulations for such groups may be located in the 2001 CBC.
- **Chapter 10 - MEANS OF EGRESS, Section 1003.1.10 Special egress-control devices.** This existing section permits various occupancies to use delayed egress control devices providing that the building is protected throughout by an approved automatic sprinkler system and an approved automatic smoke-detection system.
- **Chapter 10 - MEANS OF EGRESS, Section 1007.3 - Group E Occupancies, Section 1007.3.11 Fences and Gates.** This existing section addresses the requirements for fences and gates installed on school grounds. These fences and gates may be provided with locks, provided that a safe dispersal area is established pursuant to the regulatory requirements of this section.

## **Summary of Effect to the existing regulations of the 2001 CBC by the proposed regulations:**

The scope of the SFM's proposed amendments concentrate on Legislature's intent toward amending the "California Community Care Facilities Act" that allow the voluntary installation and use of special egress-control devices of the time-delay type and or secured perimeter fences in the following licensing categories:

- ◆ Adult Day Health Care Centers, licensed by Department of Health Services
- ◆ Adult Day Program, licensed by Department of Social Services

### **Effect to the 2001 CBC:**

**1. Chapter 1 – Administrative, Section 101 Title, Purpose and Scope, section 101.14.17 SFM.** The SFM is proposing to add the statutory references from the Health and Safety Code authorizing the SFM to promulgate regulations for Adult Day Programs and Adult Day Health Care Centers that choose to voluntarily install and use special egress-control devices of the time-delay type and or secured perimeter fences.

**2. Chapter 2 Definitions and Abbreviations, Section 202 – A.** The SFM is proposing to amend this chapter by bringing in the definitions of the following day care categories:

- ◆ Adult Day Health Care Centers, as licensed by Department of Health Services
- ◆ Adult Day Program, as licensed by Department of Social Services

These definitions are all consistent with the California Community Care Facilities Act, the California Adult Day Health Care Act and Title 22 definitions.

**3. Chapter 3 - USE OR OCCUPANCY, Section 305 – REQUIRMENTS FOR GROUP E OCCUPANCIES, Section 305.1 Group E Occupancies.** The SFM is proposing to amend the existing section by adding "Adult Day Health Care Centers" to the licensing categories allowed in this section.

**4. Table 3-A DESCRIPTION OF OCCUPANCIES BY GROUP AND DIVISION.** The SFM is proposing to amend this existing table by identifying that Group E, Division 3 Occupancies may include Adult Day Programs or Adult Day Health Care Centers that provide services to persons with Alzheimer's disease and other dementias.

**5. Chapter 10 MEANS OF EGRESS Section 1003.1.10 Special egress-control devices.** The SFM is proposing to amend this existing section to allow the following licensing categories to install and use special egress-control devices of the time-delay type and secure perimeter fences in and about programs and centers that provide care for persons with Alzheimer's disease and other dementias as documented by a physician:

- ◆ Adult Day Health Care Centers, as licensed by Department of Health Services
- ◆ Adult Day Program, as licensed by Department of Social Services

Additionally, the SFM is amending Exception number 4, by adding regulatory text that requires a 30 second deactivation for locks on doors and or gates installed with active, egress-control devices.

6. **Chapter 10 - MEANS OF EGRESS, Section 1007.3 Group E Occupancies.** The SFM is proposing to amend this chapter by adding a new section, Section 1007.3.11.1. This section will specify the means of egress requirements for the installation of fences, gates shall be provided with locks provided that a safe dispersal area is provided in the programs and centers that care and supervise adults with Alzheimer's disease and other dementias.

**Summary of Existing Regulations in the 2001 California Fire Code (CFC) affected by these proposed regulations:**

- **Article 10 Fire-Protection Systems and Equipment; Section 1006.2.12.5 Automatic Smoke Detection System Egress Control Devices.** This existing section addresses the regulatory requirements for the installation of an automatic smoke detection system when special egress control devices are used.

**Summary of Effect to the existing regulations of the 2001 CFC by the proposed regulations:**

The scope of the SFM's proposed amendments concentrate on Legislature's intent toward amending the "California Community Care Facilities Act" that allow the voluntary installation and use of special egress control devices of the time delay type and or secured perimeter fences in the following licensing categories:

- ◆ Adult Day Health Care Centers, licensed by Department of Health Services
- ◆ Adult Day Program, licensed by Department of Social Services

**Effect to the 2001 CFC:**

1. **Article 10 Fire-Protection Systems and Equipment; Section 1006.2.12.5 Automatic Smoke Detection System Egress Control Devices.** The SFM is proposing to amend this section to address the regulatory requirements for the installation of an automatic smoke detection system when special egress control devices are used.

### **Comparable Federal Statute or Regulations**

The SFM has determined that there are no comparable federal regulations or statutes addressing Adult Day Health Care Centers or Adult Day Programs that provide care and supervision of adults with Alzheimer's disease and dementia.

### **Cost Impact on Private Person or Business**

The SFM is not aware of any cost impacts that a representative private person or business would necessarily incur as a result of these proposed regulations. The use of special egress-control devices of the time-delay type and or secured perimeter fences in the Adult Day Health Care Centers or Adult Day Programs is strictly a voluntary option by the owner/operator of these centers and programs.

### **Initial Determination of No Significant Statewide Adverse Economic Impact on Businesses**

The initial determination of the SFM is that this proposed regulatory action would not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The use of special egress-control devices of the time-delay type and or secured perimeter fences in the Adult Day Health Care Centers or Adult Day Programs is strictly a voluntary option by the owner/operator of these centers and programs.

### **Policy Statement Overview**

The broad objective of these proposed emergency regulations are to act in accordance with the Legislature's intent to allow "Adult Day Programs and Adult Day Health Care Centers" the option to voluntarily install secured perimeter fencing and or special egress-control devices of the time-delay type only if that program or center provides services for person's with Alzheimer's disease and other dementias for a period of less than twenty-four hours per day.

The specific objective of these proposed emergency regulations are to amend the 2001 California Building and Fire Codes by specifying the fire and life safety requirements for the licensing categories that may be classified as a Group E, Division 3 Occupancies that may choose to voluntarily install and use secured perimeter fencing and/or special egress control device of the time delay type. The licensing categories that are permitted in a Group E, Division 3 Occupancy and who choose to install and use these devices are as follows:

- ◆ Adult Day Health Care Centers, licensed by Department of Health Services
- ◆ Adult Day Programs, licensed by Department of Social Services

## **MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS**

The SFM has determined that there are other matters prescribed by statute that are applicable to the SFM. Health and Safety Code sections 1531.2(c) (7) and 1584 (c), (7) require that emergency fire and earthquake drills shall be conducted at least once every three months or more frequently as required by a county or city or city fire department or local fire prevention district.

Pursuant to the Administrative Procedures Act, the SFM will submit emergency rulemaking to the Office of Administrative Law addressing the requirements for fire and earthquake drills required for Adult Day Health Care Centers, licensed by Department of Health Services and Adult Day Programs, licensed by Department of Social Services. These non-building regulations shall be enforced under the California Code of Regulations, Title 19, Article 3, Section 3.13.

## **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The SFM has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

## **FISCAL IMPACT STATEMENT (attached Form 399)**

- A. Cost or Savings to any state agency: **No**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **No**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **No**
- D. Other non-discretionary cost or savings imposed on local agencies: **No**
- E. Cost or savings in federal funding to the state: **No**